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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 30th day of May 1998

B E F O R E

THE HON'BLE MR. JUSTICE HARI NATH TILHARI

C.R.P. No. 3232/1993 C/v.

M.F.A. No. 2245/1993

IN C.R.P. No. 3232/93

BETWEEN :

Karnataka State Road
Transport Corporation
Central Officer,
K.H. Road,
Bangalore - 27.

rep. by its Managing Director. .. PETITIONER

(By Sri. D. Vijayakumar, Adv.)

AND :

1. L. Narasimhachar,
since dead by L.Rs.,

a. Dr. Yoganarasimhachar,

b. Sri. Y. Vijaya Raghavan,

Both are s/o. Late
L. Narasimhachar, &
R/at D. No. 377,
H. Ramanna Street,
Devaraja Mohalla,
Mysore.

.. RESPONDENTS

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IN M.F.A. No.2245/93

BETWEEN :

Karnataka State Road
Transport Corporation,
Central Offices,
Shanthi Nagar,
Bangalore - 27.

by its Chief Law Officer.

.. APPELLANT

(By Sri. D. Vijayakumar, Adv.)

AND :

Dr. L. Yoganarasimhachar,
S/o. L. Narasimhachar,
Major,
No.923, 6th Cross,
6th Main,
New Kantharaja Urs Road,
Mysore.

.. RESPONDENT

(By Sri. P. Subba Rao, Adv.)

.. .. .

C.R.P. No.3232/93 is filed U/s.115 of CPC against the order dt.16.3.1993 passed in MVC No.661/90 on the file of the I Addl. Dist. Judge and MACT-II, Mysore, partly allowing the petition filed U/s.166(1) of M.V. Act.

M.F.A. No.2245/93 is filed U/s.173 of M.V. Act, against the award dt.16.3.1993 in M.V.C No.627/90 passed by the 1st Addl. Dist. Judge & Addl. MACT., Mysore, partly allowing the claim petition for compensation.

This C.R.P. and M.F.A. coming on for hearing this day, the Court made the following:-

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O R D E R

The revision and the Miscellaneous First Appeal arises from the judgment and award of the Claims Tribunal in MVC.627/90 and 661/90 in which the Tribunal after having found that the accident had taken place due to the rash and negligent driving of the KSRTC bus which collided with the Maruthi car, belonging to the claimants, ⁴¹ ~~and~~ which was driven by the claimant-petitioner in claim petition No.627/90. The Tribunal found that the sole cause for the accident was negligent driving of the KSRTC bus and after having found the cause of accident to be sole negligence of the driver, the Tribunal on the various heads awarded compensation to the tune of Rs.69,000/- to the claimants in MVC.No.627/90 with interest at the rate of 6% p.a. In MVC.661/90 the Tribunal awarded compensation to the tune of Rs.6,000/- with interest at 6% p.a. Feeling aggrieved from the award of the Tribunal, the KSRTC has preferred the revision in the matter of MVC.661/90 and has filed MFA.2245/93 in MVC No.627/90⁴¹

2. I have heard Sri.D.Vijaykumar learned counsel for the appellant and applicant.

⁴¹ 46/15 of the Code of Civil Procedure

3. This ~~re~~ revision is maintainable from the order of the Civil Court, subordinate to the High Court,

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in which case, no appeal is maintainable to the High Court from that order ^{or award} and the Court below is shown to have committed jurisdictional error within the frame work of either of the Clause (a), (b), (c) of Section 115 or in cases whereby giving decision on a question of jurisdictional fact, the trial Court has usurped the jurisdiction not vested or refused to exercise jurisdiction vested.

4. The Motor Accidents Claims Tribunal is constituted under Section 165 of the Motor Vehicles Act. The concept for the Tribunal is distinct from the Court and distinction appears to have been maintained by the framers of the Constitution as per a scheme and from Articles 214 to 237 as well as the provisions of Article 323-A and 323-B which provide for the Tribunal as an institution distinct from the Court, vide Chapter XIV-A 'A' of the Constitution of India. Under the Motor Vehicles Act, the person qualified to be appointed as member of the Tribunal is one who is or has been a Judge of the High Court or has been a District Judge or is qualified to be

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a Judge of the High Court or a District Judge. It is not like that the only District Judge is to be appointed as member of the Tribunal. Any person who happens to be a High Court Judge or who is a Retired High Court Judge or Retired District Judge, or even a Lawyer having 10 years standing in profession of law as Advocate may be appointed to be a member of the Tribunal. So the Tribunal in such a case cannot be said to be a Court when it is constituted under the scheme of the Constitution and the Special Legislation which is specially, when the Act itself designates and describes it as the Tribunal. It has also to be considered in the light of the provisions of Section 175 of the Motor Vehicles Act, which clearly says and provides where ~~where~~ a claims Tribunal has been constituted in an area or for any area no Civil court shall have jurisdiction to entertain any question relating to any claim for compensation

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which may be adjudicated upon by the Claims Tribunal and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the claim for compensation shall be granted by the Civil Court. If it is assumed that the Tribunal ~~to~~ the Civil Court then such an assumption may have tendency to create and to lead to conflict with provisions of Section 175 of the Motor Vehicles Act itself. If the intention of the legislature or parliament would have been there to treat or deem the Motor Vehicles Claims Tribunal to be Court or Civil Court, the legislature would have so provided as it did not lack in expression. In Section 175 of the Act of 1988, also it would have used the expression 'Except as otherwise provided' but legislature has not used any such expression. ^{if} Where legislature so intends to provide such as in Section 10 of Family Courts Act, it provided that Family Courts are to be deemed to be Civil Court. The absence of such a ^{provision} ~~provision~~ and, absence of exception clause as above clearly reveals the intention of legislature, not to treat the

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Motor Accidents Claims Tribunal to be Court.

5. The learned counsel for the petitioner invited the attention of this Court to the Division Bench decision of this Court in the case of Mrs. NOREEN .R. SREEKANTALAH -Vs- DASHARATH RAMAIAH, GULBARGA & OTHERS / (AIR 1985 Kar 208). From the perusal of this decision it appears attention of the Court was not drawn to the provision of Section 175 of the Motor Vehicles Act or to the provisions of Section 110-D of Motor Vehicles Act, 1939 which barred the jurisdiction of civil with reference matters, placed within the pervuew of Motor Accidents Claims Tribunal as well as to provisions of Section 173(2) of the Motor Vehicles Act 1988 or to Section 110-D of Motor Vehicles Act 1939 which provides that no appeal shall lie in case where the value of claim in appeal is less than Rs.2,000/- under Act of 1939 and less than 10,000/- under Section 173(2). So Section 173(2) of the Act of 1988 or Section 110-D of the Act of 1939 barred the appeal and no revision^{is} provided under the Act. To assume the Tribunal to be Court

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(Civil Court) and hold revision to be maintainable will be permitting the doing of some ^{thing} contrary to the intent of the Act. That as the attention of the Division Bench in the case referred to above (AIR 1985 Kar., 205) was not drawn to above material provisions of the Motor Vehicles Act and the scheme of the Constitution as referred to above, the said decision is per incuriam judgment. A per-incumriam judgment as laid down in A.R.ANTULEY's case AIR 1988 SC 1531 (para 44, 49, 64, 138) is denude of precedent value on the point herein involved. Section 3 of the Code of Civil Procedure indicates the Courts subordinate to the High Court for the purpose of the Code. In Section 115 CPC and Section 3 of the Code, ^{the expression} Court or Civil Court refers to Courts constituted under Mysore Civil Courts Act or to Courts or Tribunals established under Special Acts and ^{where} the said Act or Act specially and expressly provided that Court or Tribunal is to be deemed to be civil court for the purpose of Civil Procedure Code such as the provision of

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Section 10 of Family Courts Act. Motor Accidents Claims Tribunal not being the Court, revision under Section 115 of the Code of Civil Procedure is not maintainable. No doubt, if there is a jurisdictional error, or Court or Tribunal has not acted according to law, this Court can look into the matter and exercise its power under Article 227 of the Constitution of India in case ^{of} glaring injustice to a party being caused from such errors as indicated above as per the law laid down in *very* ^{if many} ~~the~~ cases ~~of~~

I proceed to hear the learned counsel for the parties in the petition as well as in this Miscellaneous First Appeal.

6. Learned counsel for the appellants contended that there was negligence of the driver of the car. He invited my attention to the statement of P.Ws and D.W.1. I have gone through the record. I am unable to accept the contention of the learned counsel for the appellant in MFA or the applicant in CRP. The trial

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court has appreciated the evidence. The statement of P.W.1 is that "near Siddalingeshwara Temple at Mysore- Bangalore Road BusMNo.CAF.8842, came from Bangalore side and over took bullock cart and hit against my maruthi car on the right side front portion." He has further stated that the bus which dashed my maruthi car was coming with great speed of about 60 to 80 kms per hour and he (driver of bus) was rash and negligent in driving the bus. He stated that the road where the Siddalingeshwara temple is situated is not straight road as suggested. He further asserted that " it is not true to say that a bullock cart hit maruthi car at that time." P.W.1 further denied defence suggestion ^{and} as desposed "it is not true to say that I tried to overtake the bullock cart and that I lost control and hit KSRTC bus and that I am responsible for the accident." The P.W.2 in his statement has deposed that the K.S.R.T.C bus at that time came from the opposite direction and dashed against Maruthi car. The statement clearly means to show that KSRTC bus

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was coming from the direction opposite of the direction from which maruthi car and bullock cart were coming. He therefore states that the bus dashed against maruthi car. In the cross-examination the P.W.2 states that bullock cart was coming from opposite direction i.e., from Bangalore side. Bullock cart was not proceeding ahead of maruthi car but it was coming from opposite direction, i.e., opposite direction to P.W.2's car. P.W.4 is the third independent witness and supports the assertions made by P.Ws.1 and 2. He states that " adjoining the car towards its right a bullock cart was proceeding towards srirangapatna". He further stated that at that time a KSRTC bus came from the opposite direction and in order to avoid it, the driver of the bus hit the maruthi car on its right side". The witness further stated that " the said maruthi car was coming on the left side of the road." Due to the suggestion made by the counsel appearing on behalf of the KSRTC, it is stated that "it is not true to say that maruthi car driven by Dr.Yoganarasimhachar was trying to

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overtake the bullock cart and that at that time KSRTC bus came from the opposite direction and car hit the bus". These statements of the three witnesses clearly prove that there has been no negligence on the part of the driver of the Maruthi car. Learned counsel for the appellant tried to lay emphasis on the statement of R.W.1 and has stated that a bullock cart was coming ahead of maruthi car from the opposite direction and the driver of the maruthi car in order to overtake the bullock cart came on the right side of the road and dashed against the right side of the body of the bus. This witness further states that he went and lodged a complaint. But there is no complaint lodged by him. It means that he has made a false statement that he has lodged a complaint with police. There is nothing on the record to show that the complaint was lodged. This considered in my view, the decision of the Tribunal and the finding recorded, ^{do not} /not suffer from any error. The finding of the Tribunal that the accident has taken place on account of sole

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negligence of the K.S.R.T.C. driver is proper. Learned counsel for the appellant with respect to the compensation submitted that the claimant has not produced any estimation or evidence regarding damage. The Tribunal has assessed the compensation for damages to the tune of Rs.39,000/-. Learned counsel submitted that the compensation towards the damages is excessive. The Tribunal referred to the documents namely the estimation of the loss and repairs issued by the dealer of the maruthi car Ex.P.7. The Tribunal appears to have relied on the estimation as well as on the deposition of the P.Ws, has opined that the car belonging to claimant has been damaged to the tune of Rs.39,000/- and ~~but~~ has assessed the compensation to the tune of Rs.39,000/- as the estimation of repairs furnished by M/S.Mandovi Motors, Mysore, the authorised dealers in Maruthi Car indicated the repairs costs was likely to be Rs.38,990/-.

5. In this view of the matter, the Tribunal has not committed any error in relying on the estimation of the repairs and assessing damage

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and compensation to the tune of Rs.39,000/-, not as Rs.45,000/- as claimed. In this view of the matter, in my opinion, there is neither any merit or force in this appeal, nor in the revision petition, as such both are being dismissed herewith. Costs of appeal and revision are made easy i.e., parties to bear their own respective costs in both.

Let one copy ^{of each} of this order be placed in appeal and revision records.

Sd/-
JUDGE

mvs/ru